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In re Application of
ASGHAR, Aziz *et al*
Application No.: 09/381,055
PCT No.: PCT/SE99/00702
Int. Filing Date: 28 April 1999
Priority Date: 28 April 1998
Attorney's Docket No.: 1103326-0590
For: NOVEL USE

DECISION ON PETITION
UNDER 37 CFR 1.181

The decision is in response to applicants' "Petition Under 37 CFR § 1.181(a) to Withdraw Holding of Abandonment" filed on 24 November 2000.

BACKGROUND

On 28 April 1999, applicants filed international application PCT/SE99/00702 claiming priority to a Swedish patent application filed 28 April 1998. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 04 November 1999.

On 13 September 1999, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, authorization to charge the basic filing fee to Deposit Account 23-1703.

On 17 September 1999, an attempt was made to charge the basic filing fee to Deposit Account 23-1703, however, there was insufficient funds in the account at that time to cover the full fee.

On 26 November 1999, a Demand was filed with the International Preliminary Examination Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date, and as a result the deadline for submission of the basic national fee was extended to expire 30 months from the priority date, *i.e.*, 30 October 2000 (28 October 2000 was a Saturday).

On 24 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) because of failure to provide the full U.S. Basic National Fee by 30 months from the earliest claimed priority date.

On 24 November 2000, applicants submitted the instant petition which included copies of two Deposit Account statements for account number 23-1703 for September and October 2000.

DISCUSSION

The thirty-month period for entering the U.S. national stage did not expire until 30 October 2000. Thus, the Notification of Abandonment mailed on 24 October 2000 was sent too early. The above-captioned application could not have been abandoned for failing to pay the U.S. basic national fee until 30 October 2000.

Notwithstanding this error, a review of financial records for Deposit Account No. 23-1703 reveals that it contained insufficient funds to pay the full U.S. basic national fee. The full U.S. basic national fee was attempted to be charged on 17 September 1999 but the account had insufficient funds at that time to pay this fee.

Moreover, the deposit account statements submitted by applicants for September and October 2000 are not pertinent to this matter. A proper attempt to charge Deposit Account No. 23-1703 for the full U.S. basic national fee was made on 17 September 1999. It is applicants' responsibility to ensure that enough funds are contained in the Deposit Account and to determine if the funds to pay all the appropriate fees for the above-captioned application were subtracted from the Deposit Account. Applicants should have ensured that these funds were received prior to the expiration of the applicable 30-month deadline pursuant to 37 CFR 1.495(b)(2).

CONCLUSION

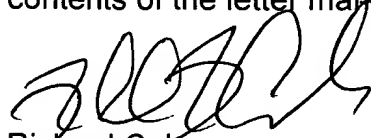
For the reasons above, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED** to the extent that the Form PCT/DO/EO/909 mailed 24 October 2000 is hereby **VACATED**.

Nevertheless, the above-captioned is hereby **ABANDONED** for failing to provide the full U.S. basic national fee as required by 37 CFR 1.495(b)(2).

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

As a proper response to this decision, applicants may also file a proper petition to revive the above-captioned application pursuant to 37 CFR 1.137(a) or 1.137(b).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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